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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/748,411      | 12/29/2003  | Paula M. Sosalla     | 19,682              | 7552             |

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| EXAMINER |
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HAND, MELANIE JO

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3761

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/748,411             | SOSALLA ET AL.      |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Melanie J. Hand        | 3761                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>various (6)</u> .   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Information Disclosure Statements***

The information disclosure statements (IDS) submitted on May 4, 2004, June 28, 2004, August 11, 2004, January 18, 2005, March 18, 2005 and January 23, 2006 were filed after the mailing date of the Application on December 29, 2003. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Examiner acknowledges the filing of the photograph submitted with the IDS filed on January 18, 2005, item A1, however the artifact was not available to Examiner at the time of this Office action. Upon receipt of the artifact from the Office, Examiner will consider said artifact in a following Office action.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the

international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6-9, 12 and 18-21, 23 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Davis et al (U.S. Patent Application Publication No. 2005/0096612).

With respect to **Claims 1-4,6,18-21,23,24**: Davis teaches diaper 20 with longitudinal axis 42 and transverse axis 44, backsheet 26 having an interior surface and an exterior surface opposite the interior surface, absorbent core 28 disposed between backsheet 26 and topsheet 24 and wetness sensation member 50 located between the wearer's body and the absorbent core. Wetness sensation member 50 has visible highlighting in the form of an appearing or disappearing graphic disposed on the body-facing side of member 50, thus being located generally on the interior surface of diaper 20. (¶¶ 0048,0049,0051,0059,0068,0069)

With respect to **Claim 5,22**: Davis does not teach that the visible highlighting is applied to the topsheet 24. However, Davis teaches that the graphic is disposed on the flow control layer 54 of wetness sensation member 50. (¶ 0059) This layer is superimposed on the exterior surface of topsheet 24 and this placement effects an identical result to placing the visible highlighting on the adjacent topsheet 24, therefore it would be obvious to one of ordinary skill in the art to simply place the visible highlighting on the abutting topsheet surface rather than flow control layer 54.

With respect to **Claim 7**: Davis teaches that layer 52 of wetness sensation member 50 is a permeable layer that performs an identical function to a surge layer. (¶ 0051)

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With respect to **Claims 8,9**: Davis teaches waist regions 36 and 38 that are defined by longitudinally opposed ends of diaper 20 that form a waist opening when assembled. Davis teaches that the wetness sensation member 50 is located in a generally central region of the article (¶ 0051) therefore the visible highlighting would be longitudinally spaced from the front waist region by a distance equal to between 25-60% of the article's length.

With respect to **Claim 12**: Davis teaches that the visible highlighting may consist of one or more patterns. (¶ 0065)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 5, 10, 11, 13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis ('612).

Claims 5, 10, 11, 13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis ('612).

With respect to **Claims 10,11,13**: Davis does not explicitly teach a total interior graphic area, however Examiner asserts that, since the graphics serve only to indicate the area of the wetness sensation member, choosing a specific value would only constitute an optimization which is unpatentable over the prior art of Davis. It has been held that where general conditions of claim are disclosed in prior art, it is not inventive to discover optimum or workable ranges by routine experimentation. See *In re Aller, Lacey and Hall* (105 USPQ 233, CCPA, 1955).

Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis ('612) in view of Olson et al (U.S. Patent No. 6,297,424).

With respect to **Claims 14-17**: Davis does not teach at least one exterior graphic located on the outer surface of backsheet 26. Olson ('424) teaches training pant 20 comprising a outer cover 40 comprised of liquid-impermeable material (Col. 12, lines 19-23), liquid-permeable bodyside liner 42 and absorbent assembly 44 located between the bodyside liner 42 and outer cover 40 (Fig. 3) (Col. 11, lines 27-33). Olson ('424) also teaches that the training pant 20, in particular outer cover 40, comprises one or more graphics (Col. 12, line 67- Col. 13, line 3). Olson ('424) teaches active object graphic 78 that is a fading graphic (Col. 2, lines 16-24, 39-41). Olson ('424) teaches the active graphic 78 is disposed on the inner layer of outer cover 40 and is visible from the exterior surface of the outer cover (Col. 13, lines 27-29) so as to be interactively interrelated to the permanent graphics (Col. 2, lines 1,2). Olson teaches that this system of interrelated permanent and active graphics is a wetness indicator that is visible from the outside

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of the diaper to a caregiver, therefore it would be obvious to modify the diaper taught by Davis to further include exterior graphics as taught by Olson.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand  
Examiner  
Art Unit 3761

MJH

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

